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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 vs.

14 DEREK COHEN, MICHAEL FLEISCHLI  
and ROBERT HERMAN,

15 Defendants,  
16  
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Case No. 14-cv-1189 JAH (NLS)

**FINAL JUDGMENT AS TO  
DEFENDANT ROBERT HERMAN**

18  
19 The Securities and Exchange Commission (the “SEC”) having filed a  
20 Complaint and Defendant Robert Herman (“Defendant”) having entered a general  
21 appearance; consented to the Court’s jurisdiction over Defendant and the subject  
22 matter of this action; consented to entry of this Final Judgment; waived findings of  
23 fact and conclusions of law; and waived any right to appeal from this Final  
24 Judgment:

25 **I.**

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant  
27 and Defendant’s agents, servants, employees, attorneys, and all persons in active  
28 concert or participation with them who receive actual notice of this Final Judgment

by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

## II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$29,318.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$3,391.00, and a civil penalty in the amount of \$29,318.00 pursuant to under Section 21A of the Exchange Act (the Insider Trading and Securities Fraud Enforcement Act of 1988, or “ITSFEA”), 15 U.S.C. § 78u-1. Defendant shall satisfy this obligation by paying \$62,027 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, name of this Court; Robert Herman's name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The SEC may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

### IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other

1 judgment, order, consent order, decree or settlement agreement entered in  
2 connection with this proceeding, is a debt for the violation by Defendant of the  
3 federal securities laws or any regulation or order issued under such laws, as set  
4 forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

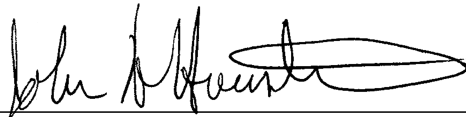
5 **V.**

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this  
7 Court shall retain jurisdiction of this matter for the purposes of enforcing the terms  
8 of this Final Judgment.

9 **VI.**

10 There being no just reason for delay, pursuant to Rule 54(b) of the Federal  
11 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment  
12 forthwith and without further notice.

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14 Dated: January 5, 2014

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17 JOHN A. HOUSTON  
18 UNITED STATES DISTRICT JUDGE  
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